

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3845/P1dn

RLR:kmg:pg

October 29, 2001

Senator Welch:

Crimes Covered by Terrorism Penalty Enhancer

The current Wisconsin terrorism penalty enhancer covers all felonies that are committed with an intent to terrorize and that: 1) result in bodily harm or death; 2) result in property damage greater than \$25,000; or 3) involve violence or force, or a threat of violence or force. The New York terrorism penalty enhancer identifies specific crimes for which the penalty may be enhanced if the crime is committed with intent to terrorize. The descriptors in the Wisconsin penalty enhancer generally cover the specific crimes identified in the New York penalty enhancer. However, the New York enhancer does cover the following crimes that are not covered by the Wisconsin enhancer:

1. Possession of a dangerous weapon with intent to use it unlawfully against another. The bill does not enhance the penalty for possession of a dangerous weapon. Nor does it permit enhancement of the penalty for the crime of threatening use of a weapon of mass destruction that is created by this bill (although a person could be convicted for both threatening use of a weapon of mass destruction and for making a terrorist threat, which is also a new crime proposed under this bill).

2. Criminal tampering. A person is guilty of criminal tampering in New York if, with intent to cause a substantial interruption or impairment of a service rendered to the public, he or she damages or tampers property of various public utilities or telephone service and causes a substantial interruption or impairment of services. This offense is covered under the current Wisconsin terrorism penalty enhancer if the damage costs \$25,000 or more to repair or replace, but not if the repair or replacement cost is less than \$25,000.

Do you want to apply the terrorism penalty enhancer to either of these crimes or to any other crimes?

Penalty Enhancer

The current Wisconsin terrorism penalty enhancer allows the fine for a felony to be increased by up to \$50,000 and the term of imprisonment to be increased by up to 10 years, if the terrorism penalty enhancer is found to apply. The New York statutes

change the classification of a penalty to the next higher class, if the terrorism penalty enhancer applies. This bill maintains the current Wisconsin enhancer. For felonies in the lower classifications, the Wisconsin format provides a greater enhancer. For penalties in the higher classifications, the New York method provides a greater enhancer.

Inchoate Crimes

Some of the crimes created in this bill may be duplicative of other inchoate crimes. (Inchoate crimes include attempt, conspiracy, and solicitation.) For example a person who provides material resources for the commission of a terrorist act could potentially be convicted of the crime of support that is proposed by this bill, and of conspiracy. The bill does not address duplication. Rather, it leaves the resolution of double jeopardy issues for the courts.

Solicitation in Wisconsin of a Crime in another state

Courts in several states have held that the prohibition against soliciting a crime applies to solicitation of an act that will be committed in another state. (See *People v. Burt*, 45 Cal. 2d 311, 288 P.2d 503; *Miller v. State*, 430 @o. 2d 611 (Fla. App. 1983); and *State v. Self*, 75 Pre. App. 230, 706 P. 2d 975.) It is unclear whether the Wisconsin solicitation statute applies to solicitation, in Wisconsin, of acts in other states. The bill therefore makes it clear that solicitation, in Wisconsin, of an act of terrorism, regardless of where the act is to take place, is punishable under the Wisconsin solicitation statute, but does not address solicitation of crimes that are not acts of terrorism.

Death Penalty and Mental Retardation

The death penalty provisions in the bill are based on the New York death penalty. New York and this bill prohibit imposing a sentence of death on a person who is found to be “mentally retarded.” The term “mentally retarded” is generally not used in Wisconsin statutes. However, states that have the death penalty and prohibit execution of people with mental deficiencies generally use the term “mentally retarded.” Please let me know if you would like the bill to use different terminology.

“Serious Crimes” and “Violent Crimes”

Current law identifies certain crimes as “serious crimes” or “violent crimes” for various purposes such as enhancing penalties for criminal violations. This bill adds references to the crime of threatening to use weapons of mass destruction in sections where there are currently references to the crime of making bomb threats. The bill does not add references to any of the other new crimes.

Please contact me with any questions or redraft requests.

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